

Bureau of Export Administration, Commerce

Pt. 700

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AUTHORITY: Sees. 101-103, 701-707, 709, and 713, Defense Production Act of 1950 (Pub. L. 81-774, 64 Stat. 798,) as amended (50 u.s.c.

app. 2071-2073, 2151-2157, 2159, and 2163); E.O. 10480, 3 CFR 1949-53 Comp. p. 962, as amended; E.O. 12148, 3 CFR 1979 Comp. p. 412, as amended; Defense Mobilization Order (DMO) 3, 44 CFR part 322; DMO-12, 44 CFR part 329; DMO-13, 44 CFR part 330, 50 U.S.C. 488, 10 U.S.C. 4501 and 9501, 50 U.S.C. 82, and Executive Order 12742 of January 8, 1991, 56 FR 1079.

SOURCE: 49 FR 30414, July 30, 1984, unless otherwise noted. Redesignated at 54 FR 501, Jan. 9, 1989.

## Subpart A—Purpose

### 3700.1 Purpose of **this** regulation

(a) Title I of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) (Defense Production Act), authorizes the President: to require the priority performance of contracts and orders necessary or appropriate to promote the national defense over other contracts or orders; to allocate materials and facilities as necessary or appropriate to promote the national defense; and to require the allocation of, or the priority performance under contracts or orders relating to, supplies of materials and equipment in order to assure domestic energy supplies for national defense needs.

(b) This regulation consolidates, simplifies, and revises the Defense Materials System and the Defense Priorities System regulations, directions, and orders. The Defense Priorities and Allocations System (DPAS) helps to keep current national defense programs on schedule and provides an operating system that can be rapidly expanded in a national emergency.

(c) To aid in understanding and using the DPAS, an overview of its major provisions is incorporated into this regulation as subpart B—Overview. The full text of the DPAS is found in subparts D through L.

## Subpart B—Overview

### § 704).2 Introduction.

(a) The Federal Emergency Management Agency authorizes certain national defense programs for priorities and allocations support. For example, military aircraft production, ammunition, and certain programs which maximize domestic energy supplies are “authorized programs.” A complete list of

currently authorized programs is provided at Schedule I.

(b) To ensure the preferential treatment of certain contracts and orders for authorized programs, the Department of Commerce administers the DPAS.

(c) Commerce has delegated authority to place priority ratings on contracts or orders necessary or appropriate to promote the national defense to the government agencies that issue such contracts or orders. Schedule I includes a list of agencies delegated this authority. Copies of the Delegations of Authority are provided at Appendix I. They set forth the authorities delegated and those retained by Commerce.

### § 700.3 Priority ratings and rated orders.

(a) Rated orders are identified by a priority rating consisting of the rating—either DX or DO—and a program identification symbol. Rated orders take preference over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take preference over DO rated orders. Program identification symbols indicate which authorized program is involved with the rated order. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. The program identification symbols, in themselves, do not connote any priority.

(b) Persons receiving rated orders must give them preferential treatment as required by this regulation. This means a person must accept and fill a rated order for items that the person normally supplies. The existence of previously accepted unrated or lower rated orders is not sufficient reason for rejecting a rated order. Persons are required to reschedule unrated orders if they conflict with performance against a rated order. Similarly, persons must reschedule DO rated orders if they conflict with performance against a DX rated order.

(c) All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date.

(d) Persons who receive rated orders must in turn place rated orders with their suppliers for the items they need to fill the orders. This provision en-

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... .  
sures that suppliers will give priority treatment to rated orders from contractor to subcontractor to suppliers throughout the procurement chain.

(e) Persons may place a priority rating on orders only when they are in receipt of a rated order, have been explicitly authorized to do so by the Department of Commerce or a Delegate Agency, or are otherwise permitted to do so by this regulation.

§700.4 **Controlled materials.**

(a) Federal central management of certain key materials, designated "controlled materials", has been essential in the past to effective industrial mobilizations. "Accordingly, special rules are maintained" in peacetime to provide an operating mechanism that can be rapidly expanded during a national emergency to meet increased defense and other essential needs. Currently, the controlled materials are steel, copper, aluminum, and nickel alloys.

(b) Under the controlled materials program, the Department of Commerce requires suppliers of controlled materials to accept rated orders up to a specified quantity of material during a given period of time. This quantity is called a "set-aside". This provision ensures that the material will be available when rated orders are placed. In addition, the system ensures that controlled materials producers are treated equitably, for after the set-aside quantity levels have been reached, controlled materials producers may generally reject additional rated orders. These orders would then be filled by other controlled materials producers who had not exhausted their set-aside requirement. . . .

(c) In time of national emergency, the level and scope of the controlled materials program may be greatly expanded to ensure the necessary allocation of materials and in order to direct general industrial activity toward supporting the requirements of the emergency.

(d) Certain other items, in addition to the controlled materials, have critical importance to national defense programs. From time-to-time, special rules, similar to those for controlled

materials, may be needed to manage those materials.

(e) If items become scarce and critical and the requirements of the national defense cannot be met without creating a significant dislocation in the civilian market place so as to create appreciable hardship, special rules may be established under section 101(b) of the Defense Production Act to control the general distribution of such items in the civilian market.

5700.5 Special priorities assistance.

(a) The DPAS is designed to be largely self-executing. However, from time-to-time production or delivery problems will arise. In this event, special priorities assistance is available from Commerce and from the Delegate Agencies.

(b) Special priorities assistance is available for any reason consistent with this regulation. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special Priorities assistance may also be used to request rating authority for items not automatically ratable.

§ 700.6 official actions.

When necessary, Commerce takes specific official actions to implement or enforce the provisions of this regulation and to provide special priorities assistance. Such actions may include the issuance of: Rating Authorizations, Directives, Letters of Undemanding, Set-asides, and compliance documents (Administrative Subpoenas, Demands for Information, and Inspection Authorizations).

§ 700.7 **Compliance.**

(a) Compliance with the provisions of this regulation and official actions is required by the Defense Production Act. Violators are subject to criminal penalties.

(b) Any person who places or receives a rated order should be "thoroughly familiar with, and must comply with, the provisions of this regulation.

### Subpart C—Definitions

#### § 700.8 Definitions.

The following definitions pertain to all sections of the regulation

*Authorized program.* A program approved by the Federal Emergency Management **Agency** for priorities and allocations support under the Defense Production Act.

*Construction.* The erection, addition, extension, or alteration of any building, structure, or project, using **materials** or products which are to be an **integral** and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

*Controlled materials.* The various shapes and forms of steel, copper, **aluminum**, and nickel **alloys**, whether new, remelted, rerolled or redrawn, as specified in Schedule **II**, and as defined in Schedule **III**.

*Controlled materials suppliers.* All persons, including **producers**, distributors, brokers, importers and exporters engaged in the sale or resale of controlled materials.

*Delegate Agency.* A government agency authorized by delegation from the Department of Commerce to place **priority** ratings on contracts or orders needed to support authorized programs.

*Defense Production Act.* the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*).

*Distributors of controlled materials.* Those persons (including warehouse **operators** or jobbers, but not retailers) engaged in stocking controlled materials at locations **regularly** maintained for their sale or resale in the form or shape as received, or after performing such operations **as** cutting to length or shape, slitting, shearing, or sorting and **grading**.

*Further conversion.* The further processing of controlled materials by a processor of such materials.

*Item.* Any raw, in process, or manufactured **material**, **article**, commodity, supply, equipment, component, accessory, part, **assembly**, or product. of any **kind**, **technical** information, process, or service.

*Lead time.* The period of time **specified** in this regulation for the receipt of orders for controlled materials by a

supplier in advance of the first day of the month in which shipment is **required**.

*Maintenance and repair and operating supplies (MRO):*

(a) *Maintenance* is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(b) *Repair* is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or **unfit** for service by wear and tear, damage, or failure of parts.

(c) *Operating supplies* are "any items carried **as** operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, **chemicals** and other expendable items.

(d) **MRO** does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of smother person, or items required for the production of such items: items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

*Minimum mill quantity.* The minimum quantity of a controlled material that may be obtained from a producer for shipment at any one time to any one **destination**.

*Official action.* An action taken by **Commerce** under the authority of the Defense Production Act and this regulation. Such actions include the issuance of Set-asides, Rating Authorizations, Directives, Letters of Understanding, Demands for Information, Inspection Authorizations, and **Administrative** Subpoenas.

*Person.* Any individual, corporation, partnership, association, or **any** other **organized** group of **persons**, and includes any agency of the United States Government or any other government.

*Production equipment.* Any item of capital equipment used in producing materials or furnishing services that **has** a unit acquisition cost of \$2,500 or more, **an** anticipated **service** life in **ex-**

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~~cess of one year, and the~~ potential for maintaining its integrity, = a capital item.

**Rated order.** A prime contract, a sub-contract, or a purchase order in support of an authorized program issued in accordance with the provisions of this regulation.

**Set-aside.** The amount of an item for which a supplier must reserve order book space in anticipation of the receipt of rated orders.

[49 FR 30414, July 30, 1984; 49 FR 50172, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989]

Subpart D—Industrial Priorities

§ 700.10 Delegation of authority.

(a) The priorities and allocations authorities given to the President in Title I of the Defense Production Act have been delegated to the Director of the Federal Emergency Management Agency (FEMA), who, in turn, has delegated these authorities with respect to industrial resources to the Secretary of Commerce. FEMA retains the overall policy and coordinating functions for this delegated authority.

(b) Within the Department of Commerce, these responsibilities have been assigned to the Office of Industrial Resource Administration. The Department of Commerce has authorized the Delegate Agencies to assign priority ratings to orders for items needed for authorized programs. Copies of these Delegations of Authority are provided at Appendix I. They set forth the authorities delegated and those retained by Commerce.

§ 700.11 Priority ratings.

(a) **Levels of priority.** (1) There are two levels of priority established by this regulation, identified by the rating symbols “DO” and “DX”.

(2) All DO rated orders have equal priority with each other and take preference over . . . unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see § 700.14(c).)

(3) In addition, a Directive issued by Commerce takes preference over any DX rated order, DO rated order, or

unrated order, as stipulated in the Directive. (For a full discussion of Directives, see § 700.62.)

(b) **Program identification symbols.** Program identification symbols indicate which authorized program is being supported by a rated order. The list of authorized programs and their identification symbols are listed in Schedule I. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. Program identification symbols, in themselves, do not connote any priority.

(c) **Priority ratings.** A priority rating consists of the rating symbol—DO and DX—and the program identification symbol, “such as A1, B2, or H6. Thus, a contract for the production of an aircraft will contain a DO-A1 or DX-A1 priority rating. A contract for a radar set will contain a DO-A7 or DX-A7 priority rating.

§ 700.12 Elements of a rated order.

Each rated order must include:

(a) The appropriate priority rating (e.g. DO-AL DX-A4, DO-HI);

(b) A required delivery date or dates. The words “immediately” or “as soon as possible” do not constitute a delivery date. A “requirements contract” bearing a priority rating may contain no specific delivery date or dates and may provide for the furnishing of items from time-to-time or within a stated period against specific purchase orders or “calls”. Such “calls” must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original “requirements contract”;

(c) The signature of an individual authorized to sign rated orders for the person placing the order. The signature certifies that the rated order is authorized under this regulation and that the requirements of this regulation are being followed; and

(d) A statement that reads in substance:

This is a rated order certified for national defense use, and You are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700).



**§ 700.13 Acceptance and rejection of rated orders.**

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person shall accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.

(2) A person shall not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by Commerce:

(1) A person shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person shall not accept a DO rated order for delivery on a date which would interfere with delivery of any previously accepted DO or DX rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person shall not accept a DX rated order for delivery on a date which would interfere with delivery of any previously accepted DX rated orders, but must offer to accept the order based on the earliest delivery date otherwise possible.

(c) *Optional rejection.* Unless otherwise directed by Commerce, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment:

(2) If the order is for an item not supplied or for a service not performed;

(3) If the order is for an item produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items, the supplier is ob-

ligated to accept rated orders up to that quantity or portion of production, whichever is greater, sold within the past two years;

(4) If the person placing the rated order, other than the U.S. Government, makes the item or performs the service being ordered;

(5) If the rated order is for a controlled material in an amount below the minimum mill quantity established in Schedule II, and the person placing the order is not willing to buy the minimum quantity;

(6) If the rated order is for a controlled material and is not received by the controlled materials producer within the time frame specified in Schedule I;

(7) If the applicable set-aside has been reached or would be exceeded by acceptance, except that a DX order must be accepted without regard for such set-aside;

(8) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of the Department of Commerce issued under the authority of the Defense Production Act [See S700.75].

**(d) Customer notification requirements.**

(1) A person must accept or reject a rated order in writing within ten working days after receipt of a DO rated order and within five working days after receipt of a DX rated order. The person must give reasons in writing for the rejection.

(2) If a person has accepted a rated order and later discovers that, due to circumstances beyond the person's control, deliveries will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment date. If notification is given verbally, written confirmation must be provided within five working days.

**4700.14 Preferential scheduling.**

(a) A person must schedule operations, including the acquisition of all needed production items, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery

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dates for rated orders cannot otherwise be met.

(b) DO rated orders must be given production preference over unrated orders, if necessary to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery against unrated orders. Similarly, DX rated orders must be given preference over DO rated orders and unrated orders.

*Examples:* If a person receives a DO rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX rated order is received calling for delivery on July 15 and a person has a DO rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order.

(c) If a person cannot fill all the rated orders of equal priority status received on the same day, the person must accept those orders which can be filled which have the earliest delivery dates. For example, the person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. For those orders which cannot be filled on time, the supplier must inform the customer within the time limits set forth in § 700.13(d), of the earliest date on which delivery can be made and, offer to accept the order on the basis of that date.

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in § 700.17(b).

§ 700.15 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this regulation or as directed by the Department of Commerce.

For example, if a person is in receipt of a DO-A3 rated order for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO-A3 rated order to obtain the needed semiconductors.

(b) The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain.

§ 700.16 Changes or cancellations of priority ratings and rated orders.

(a) The priority rating on a rated order may be changed or cancelled by:

(1) An official action of the Department of Commerce; or

(2) Written notification from the person who placed the rated order (including a Delegate Agency).

(b) If an unrated order is amended "so as to make it a rated order, or a DO, rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of § 700.13.

(d) The following amendments do not constitute a new rated order: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design; or a change which is agreed upon between the supplier and the customer.

(e) If a person no longer needs items to fill a rated order, any rated orders placed with suppliers for the items, or the priority rating on those orders, must be cancelled.

(f) When a priority rating is added to an unrated order, or a rated order is cancelled, all suppliers must be promptly notified in writing.

**§ 700.17 Use of rated orders.**

(a) A person must use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed, or converted into scrap or by-products, in the course of processing,

(2) Containers or other packaging materials *required* to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders; and

(4) MRO needed to produce the finished items to fill rated orders. However, for MRO, the priority rating used must contain the program identification symbol H7 along with the rating symbol contained on the customer's rated order. For example, a person in receipt of a DO-A3 rated order, who needs MRO, would place a DO-H7 rated order with the person's supplier.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating symbol and the program identification symbol indicated on the customer's rated order must be used on the order (except as provided in § 700.31(d)—Controlled materials program identification symbols). A DX rating symbol may not be used even if the inventory was used to fill a DX rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined. In this case, the program identification symbol H1 must be used (i.e., DO-H1) (not applicable to controlled materials producers).

(c) A person may combine DX and DO rated orders from one customer or several customers if the items covered by each level of priority are identified separately and clearly. If different program identification symbols are indicated on those rated orders of equal priority, the person must use the program identification symbol H1 (i.e., DO-H1 or DX-H1), except as provided in

§ 700.31(d) (Controlled materials program identification symbols).

(d) *Combining rated and unrated orders.* (1) A person may combine rated and unrated orders provided that the rated quantities are identified separately and are also contained in a separate rated order which conforms to the requirements of § 700.12 (Elements of a rated order). In addition to identifying clearly the rated quantities, the combined purchase order must contain a statement that the rated quantities are contained in a separate rated order placed in accordance with this regulation. Wherever possible, the separate rated order must be physically attached to the combined purchase order. A supplier must give preferential treatment to the rated quantities of the combined order, if necessary. A supplier may not use the authorities of this regulation to give preferential treatment to the unrated portion.

(2) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this regulation or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under § 700.80.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than \$5,000 provided that delivery can be obtained in a timely fashion without the use of the priority rating.

**§ 700.18 Limitations on placing rated orders.**

(a) *General limitations.* (1) A person may not place a DO or DX rated order unless entitled to do so under this regulation.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item than needed, except to obtain a minimum procurable quantity. Separate



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~~rated orders may not~~ be placed ~~solely~~ for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items in advance of the receipt of a rated order, *except as* specifically authorized by Commerce (see § 700.51(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(iv) Any of the following items unless specific priority rating authority has been ~~obtained from~~ a Delegate Agency or Commerce:

(A) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order; and

(B) Production or construction equipment or items to be used for the manufacture of *production* equipment. [For information on requesting priority rating authority, see § 700.53.]

.. (b) *Jurisdictional limitations.* (1) The priorities and "allocations authority for certain items has been delegated under Executive Order 10480, as amended, to other agencies, and, thus, the provisions of this regulation are not applicable to them. These items include:

(i) Petroleum, gas, solid fuel, and electric power and all other forms of energy (Department of Energy);

(ii) Food and the domestic distribution of farm equipment and commercial fertilizer (Department of Agriculture);

(iii) Civil transportation and the movement of persons and property by all modes (Department of Transportation);

(iv) ~~Minerals~~ (Department of the Interior);

(v) Water (Department of Defense-U.S. Army Corps of Engineers);

(vi) Housing facilities (Department of Housing and Urban Development);

(vii) Health facilities (Department of Health and Human Services); and

(viii) Radioisotopes, stable isotopes, source ~~material, and~~ special nuclear material, produced in ~~Government-~~ owned plants *or* facilities operated by or for Department of Energy (Department of Energy).

(2) The jurisdiction of the Department of Commerce and the Departments of Energy, Agriculture, and the Interior over certain specific items in-

~~cluded in~~ the categories ~~listed~~ above has been clarified by .. Interagency Memoranda of Understanding. Copies of these Memoranda are provided for ~~information~~ at Appendix II.

(3) ~~The following~~ items under ~~the~~ jurisdiction of Commerce are currently excluded ~~from~~ the rating provisions of this regulation; however, these items are subject to Commerce Directives. These excluded items are:

Communication sex-rices  
Copper raw materials (ss defined in Schedule III)  
Crushed stone  
Gravel  
Sand  
Scrap  
slag  
Steam heat, central  
Waste paper

**Subpart E—Industrial Priorities for Energy Programs**

§ 700.20 USE of priority ratings. .

(a) Section 101(c) of the Defense Production Act authorizes the use of priority ratings for projects which maximize domestic energy supplies.

(b) Projects which maximize domestic energy supplies include those which maintain or further domestic energy exploration, production, refining, and transportation; maintain or further the conservation of energy; or are involved in the construction or maintenance of energy facilities.

**§ 700.21 Application for priority rating authority.**

(a) For projects believed to maximize domestic energy supplies, a person may request priority "rating authority for scarce, critical and essential supplies of materials and equipment by submitting DOE Form PR 437 to the Department of Energy. Blank applications and further information may be obtained from the Technical Information Center, Department of Energy, P.O. Box 82, Oak Ridge, Tennessee 37830, or from the Procurement and Assistance Management Directorate, Department of Energy, Attn: MA 932, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(b) On receipt of the application, the Department of Energy will:

(1) Determine if the project maximizes domestic energy supplies; and

(2) Find whether the materials or equipment involved in the application are critical and essential to the project.

(c) If the Department of Energy notifies Commerce that the project maximizes domestic energy supplies and that the materials or equipment are critical and essential, Commerce must find whether the items in question are scarce and whether there is a need to use the priorities and allocations authorities.

(1) Scarcity implies an unusual difficulty in obtaining the material or equipment in a timeframe consistent with the timely completion of the energy project. Among the factors to be used in making the scarcity finding will be the following:

- (i) Value and volume of material or equipment shipments;
- (ii) Consumption of material and equipment
- (iii) Volume and market trends of imports and exports;
- (iv) Domestic and foreign sources of Supply;
- (v) Normal levels of inventories;
- (vi) Rates of capacity utilization;
- (vii) Volume of new orders; and
- (viii) Lead times for new orders.

(2) In finding whether there is a need to use the priorities and allocations authorities, Commerce will consider alternative supply solutions and other measures.

(d) If Commerce does not find that the items of material or equipment are scarce, it will not proceed to analyze the need to use the priorities and allocations authorities.

(e) Commerce will inform the Department of Energy of the results of its analysis. If Commerce has made the two required findings, it will authorize the Department of Energy to grant the use of a priority rating to the applicant.

(f) Schedule I includes a list of authorized programs to support the maximization of domestic energy supplies. A Department of Energy regulation setting forth the procedures and criteria used by the Department of Energy in making its determination and findings is published in 10 CFR part 2.16.

## ~~Subpart F—The Controlled Materials~~

### ~~§ 700.30 Management of the controlled materials.~~

(a) The controlled materials are steel, copper, aluminum, and nickel alloys in the shapes and forms listed in Schedule II and defined in Schedule III. These materials are basic industrial resources necessary for both authorized defense programs and for general industrial activity. Federal management of these four materials assures the timely availability of the materials to meet current authorized program requirements; assures the equitable distribution of requirements among the suppliers of the materials; and provides a flexible and expandable system capable of directing general economic and industrial activity during times of emergency.

(b) Before controlled materials can be used for authorized programs, the Delegate Agencies must obtain specific approval, known as an allotment, from the Federal Emergency Management Agency (FEMA). Accordingly, the Delegate Agencies submit to FEMA requirements for the controlled materials necessary to support their authorized programs. After reviewing the available supply of the materials and other national security, economic and policy considerations, FEMA approves the use of specific quantities of controlled materials by issuing allotments to each Delegate Agency. (Special controlled materials provisions applicable to the Delegate Agencies are found in the Delegations of Authority and the U.S.-Canadian Memorandum of Understanding appended to this regulation.)

(c) To assure the timely availability of controlled materials, the Department of Commerce manages their supply and distribution by requiring producers and distributors of controlled materials to set-aside or reserve space in their order books for the receipt of rated orders. This process is described in greater detail in the following section.

### ~~§ 700.31 Specific rules for controlled materials suppliers and users.~~

~~(a) Rated orders. Rated orders are used to obtain controlled materials.~~

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(2) A controlled materials producer must use the program identification symbol H3 on rated orders to obtain controlled materials for further conversion needed for production or inventory replacement.

(3) A controlled materials distributor must use the program identification symbol H4 on rated orders to obtain controlled materials needed to fill rated orders, or to replace in inventory, controlled materials used to fill rated orders.

(e) *Controlled materials shipments and requirements data.* (1) Controlled materials producers and distributors are required to maintain and submit to Commerce upon request, data on shipments against rated and unrated orders and on related activities [OMB Nos. 0625-0107 (Recordkeeping), 0625-0011 (Copper), 06254016 (Aluminum), 06250017 (Steel), and 0625-0021 (Nickel Alloys)].

(2) Persons performing against rated orders must provide, upon request of the appropriate Delegate Agency or the prime contractor, data on requirements for controlled materials needed to fill rated contracts for items manufactured to authorized program specifications or used in construction for authorized programs [OMB Nos. 0625-0107 (Recordkeeping) and 0625-0013 (Controlled Materials Requirements—Production, Construction, or Research and Development)]. Prime contractors may request this information from their subcontractors only when needed to satisfy a request for requirements data from a Delegate Agency.

**Subpart G—Critical Items**

**§700.40 General provisions,**

(a) From time-to-time Commerce may determine that certain items have a critical-importance to industrial production with respect to the national defense and authorized programs. Special rules for such items are set forth in this subpart...

(b) Commerce may establish special rules as needed to ensure that critical items are available to authorized programs in a timely fashion and to provide for an equitable and orderly distribution of requirements for such items among all suppliers of the items.

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**§ 700.41 Metalworking machines,**

(a) "Metalworking machines" include power driven, manual or automatic, metal cutting and metal forming machines and complete machines not supported in the hands of an operator when in use. Basic machines with a list price of \$2,500 or less are not covered by this section.

(b) Metalworking machines covered by this section include:

Bending and forming machines  
Boring machines  
Broaching machines  
Drilling and tapping machines  
Electrical discharge, ultrasonic and chemical erosion machines  
Forging machinery and hammers  
Gear cutting and finishing machines  
Grinding machines  
Hydraulic and pneumatic presses, power driven  
Machining centers and way-type machines  
Manual presses  
Mechanical presses, power driven  
Milling machines  
Miscellaneous machine tools  
Miscellaneous secondary metal forming and cutting machines  
Planers and shapers  
Polishing, lapping, boring, and finishing machines  
Punching and shearing machines  
Riveting machines  
Saws and filing machines  
Turning machines, lathes, including automatic  
Wire and metal ribbon forming machines

(c) A metalworking machine producer is not required to accept DO rated orders calling for delivery in any month of a total quantity of any size of machine in excess of 60 percent of scheduled production of that size of machine for that month, or any DO rated orders received less than three months prior to the beginning of the month for which delivery is requested. However, DX rated orders must be accepted without regard to a set-aside or the lead time, if delivery can be made by the required date.

**Subpart H-Special Priorities Assistance**

**3700.60 General provisions.**

(a) The DPAS is designed to be largely self-executing. However, it is anticipated that from the-to-time problems will occur. In this event, a person

should immediately contact the ~~appropriate contract administration officer~~ for guidance or assistance. If additional formal aid is needed, special priorities assistance should be sought from the Delegate Agency through the contract administration officer. If the Delegate Agency is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Delegate Agency may forward the request to the Department of Commerce for action. Special priorities assistance is a service provided to alleviate problems that do arise.

(b) Special priorities assistance can be provided for any reason in support of this regulation, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not automatically ratable under this regulation.

(c) A request for special priorities assistance or priority rating authority must be submitted on Form ITA-999 (OMB control number 0625-0015) to the local contract administration representative. Form ITA-999 may be obtained from the Delegate Agency representative, any Commerce District Office, or from the Department of Commerce. A sample Form ITA-999 is attached at Appendix III.

[49 FR 30414, July 30, 1984; 49 FR 50171, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989]

### 3700i~~So~~\* for priority rating

(a) If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this regulation, the person may request the authority to use a priority rating in ordering the needed items. Examples of items for which priority ratings can be authorized include:

(1) Production or construction equipment;

(2) Computers when not used as production items; and

(3) Expansion, rebuilding or replacing Plant facilities.

(b) *Rating authority for production or construction equipment.* (1) A request for priority rating authority for production or construction equipment must

be submitted to the appropriate Delegate Agency. The Delegate Agency may establish particular forms to be used for these requests (e.g., Department of Defense Form DD 691.)

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) *Rating authority in advance of a rated prime contract.* (1) In certain cases and upon specific request, Commerce, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders if these orders have to be cancelled in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from a Delegate Agency and our use of that priority rating with our suppliers in no way commits the Delegate Agency, the Department of Commerce or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, Commerce will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

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- (iii) Whether the contractor is the sole source;
  - (iv) Whether the item being produced has a long lead time;
  - (v) The political sensitivity of the project; and
  - (vi) The time period for which the rating is being requested.
- (4) Commerce may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.
- (5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders is cancelled.

§ 700.52 Examples of assistance.

- (a) While special priorities assistance may be provided for any reason in support of this regulation, it is usually provided in situations where:
- (1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or
  - (2) A person cannot locate a supplier for an item needed to fill a rated order.
- (b) Other examples of special priorities assistance include:
- (1) Ensuring that rated orders receive preferential treatment by suppliers;
  - (2) Resolving production or delivery conflicts between various rated orders;
  - (3) Assisting in placing rated orders with suppliers;
  - (4) Verifying the urgency of rated orders; and
  - (5) Determining the validity of rated orders.

§ 700.63 Criteria for assistance.

Requests for special priorities assistance should be timely, i.e., the request has been submitted promptly and enough time exists for the Delegate Agency or Commerce to effect a meaningful resolution to the problem, and must establish that:

- (a) There is an urgent need for the item and
- (b) The applicant has made a reasonable effort to resolve the problem.

§ 700.54 Instances where assistance will not be provided.

Special priorities assistance is provided at the discretion of the Delegate

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Agencies and Commerce when it is determined that such assistance is warranted to meet the objectives of this regulation. Examples where assistance will not be provided include situations when a person is attempting to:

- (a) Secure a price advantage;
- (b) Obtain delivery prior to the time required to fill a rated order;
- (c) Gain competitive advantage;
- (d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or
- (e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

§ 700.66 Assistance programs with Canada and other nations.

(a) To promote military assistance to foreign nations, this section provides for authorizing priority ratings to persons in Canada and in other foreign nations to obtain items in the United States in support of authorized programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Canada.

(b) *Canada.* (1) The joint U.S.-Canadian military arrangements for the defense of North America and the integrated nature of their defense industries as set forth in the *U.S.-Canadian Statement of Principles for Economic Cooperation* (October 26, 1950) require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(2) The Department of Commerce coordinates with the Canadian Department of Supply and Services on all matters of mutual concern relating to the administration of this regulation. A copy of the Memorandum of Understanding between the two departments is provided at appendix IV.

(3) Any person in the United States ordering defense items in Canada should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the



supplier's vendor to fill the order, they should contact the Canadian Department of Supply and Services for authority to place rated orders in the United States.

(4) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applying to the Canadian Department of Supply and Services in accordance with procedures specified by that Department.

(5) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply for such assistance to the Canadian Department of Supply and Services. The Department of Supply and Services will forward appropriate requests to Commerce.

(6) Any person in the United States requiring assistance in obtaining items in Canada must submit a request through the Delegate Agency to Commerce on Form ITA-999. Commerce will forward appropriate requests to the Canadian Department of Supply and Services.

(c) *Foreign nations.* (1) Any person in a foreign nation other than Canada requiring assistance in obtaining defense items in the United States or priority rating authority for defense items to be purchased in the United States, should apply for such assistance or rating authority to the U.S. Department of Defense. The request must be sponsored by the government of the foreign nation prior to its submission.

(2) If the Department of Defense endorses the request, it will be forwarded to Commerce for appropriate action.

### Subpart I—Official Actions

#### 3700.60 General provisions.

(a) Commerce may, from time-to-time, take specific official actions to implement or enforce the provisions of this regulation.

(b) Several of these official actions (Rating Authorizations, Directives, and Letters of Understanding) are discussed in this subpart. Other official actions which pertain to compliance (Administrative Subpoenas, Demands for Information, and Inspection Authorizations) are discussed in § 700.71(b).

#### #700.61 Rating **Authorizations.**

(a) A Rating Authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item not normally ratable under this regulation; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see § 700.51.

#### 5700.62 **Directives.**

(a) A Directive is an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

(b) A person must comply with each Directive issued. However, a person may not use or extend a Directive to obtain any items from a supplier, unless expressly authorized to do so in the Directive.

(c) Directives take precedence over all DX rated orders, DO rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

#### \$700.63 Letters of Understanding.

(a) A Letter of Understanding is an official action which may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (Commerce, the Delegate Agency, the supplier, and the customer).

(b) A Letter of Understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this regulation, or to take other official actions. Rather, Letters of Understanding are used to confirm production or shipping schedules which do not require modifications to other rated orders.

### Subpart J—Compliance

#### \$700.70 General provisions.

(a) **Compliance** actions may be taken for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act, this regulation, or an official action.

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Such actions include audits, investigations, or other inquiries.

(b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.

(c) Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act, this regulation, or an official action of the Department of Commerce, is a criminal act, punishable as provided in the Defense Production Act and as set forth in \$700.74 of this regulation.

\$700.71 Audits and investigations.

(a) Audits and investigations are official examinations of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act, this regulation, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this regulation.

(b) When undertaking an audit, investigation, or other inquiry, the Department of Commerce shall:

(1) Define the scope and purpose in the official action given to the person under investigation, and

(2) Have ascertained that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency;

(c) In administering this regulation, Commerce may issue the following documents which constitute official actions:

(1) *Administrative Subpoenas.* An Administrative Subpoena requires a person to appear as a witness before an official designated by the Department of Commerce to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act, this regulation, or official actions. An Administrative Subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demand for Information.* A Demand for Information requires a person to furnish to a duly authorized representative of the Department of Commerce

any information necessary or appropriate to the enforcement or the administration of the Defense Production Act, this regulation, or official actions.

(3) *Inspection Authorizations.* An Inspection Authorization requires a person to permit a duly authorized representative of Commerce to interview the person's employees or agents, to inspect books, records, documents, other writings and information in the person's possession or control at the place where that person usually keeps them, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act, this regulation, or official actions.

(d) The production of books, records, documents, other writings and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the Administrative Subpoena or Demand for Information, a duly authorized official of Commerce is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of Commerce as to the content of the material.

(e) An Administrative Subpoena, Demand for Information, or Inspection Authorization shall include the name, title or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the Administrative Subpoena, Demand for Information, or Inspection Authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) *Service* of a Demand for Information or Inspection Authorization shall be made personally, or by Certified Mail-Return Receipt Requested at the person's last known address. Service of an Administrative Subpoena shall be made personally. Personal service may also be made by leaving a copy of the

document with someone of suitable age and discretion at the person's last known dwelling or place of business.

(2) **Service** upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or over may serve an Administrative Subpoena, Demand for Information, or Inspection Authorization. When personal service is made, "the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer.. In case of failure to make service, the reasons for the failure shall be stated on the original document.

#### 3700.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of Commerce to have access to any premises or source of information necessary to the administration or the enforcement of the Defense Production Act, this regulation, or official actions, the Commerce representative may seek compulsory process. Compulsory process means the institution of appropriate legal action, including *ex parte* application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Director of the Office of Industrial Resource Administration, U.S. Department of Commerce, in consultation with the Assistant General Counsel for International Trade, U.S. Department of Commerce, there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such Process desirable or necessary.

#### § 700.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, Commerce may inform the person in writing where compliance with the requirements of the Defense Production Act, this regulation, or an official action were not met.

(b) In cases where Commerce determines that failure to comply with the provisions of the Defense Production Act, this regulation, or an official action was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willful violation of the Defense Production Act, this regulation, or an official action..

#### 3700.74 Violation penalties, and rem-

(a) Willful violation of the provisions of Title I or sections 705 or 707 of the Defense Production Act, this regulation, or an official action is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. Except as provided in (b) below, the maximum penalties provided by the Defense Production Act are a \$10,000 fine, or one year in prison, or both.

(b) Willful refusal to furnish any information or reports required by Commerce under section 705 of the Defense Production Act, this regulation, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. Maximum penalties provided by the Defense Production Act are a \$1,000 fine, or one year in prison, or both.

(c) The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this regulation, or an official action.

(d) In order to secure the effective enforcement of the Defense Production Act, this regulation, and official actions, the following are prohibited (see section 704 of the Defense Production

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Act; see also, for example, sections 2 and 3701 of Title 18, United States Code):

(1) No person ~~may~~ solicit, influence or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act, this regulation, or an official action. In such instances, the person must immediately notify the Department of Commerce that, in accordance with this provision, delivery has not been made.

3700.75 compliance **conflicts.**

If compliance with any provision of the Defense Production Act, this regulation, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, this regulation, or an official action, the person must immediately notify the Department of Commerce for resolution of the conflict.

**Subpart K—Adjustments,  
Exceptions, and Appeals**

**§700.80 Adjustments or exceptions.**

(a) A person may submit a request to the Office of Industrial Resource Administration, U.S. Department of Commerce, for an adjustment or exception on the ground that:

(1) A provision of this regulation or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) "The consequence of following a provision of this regulation or an official action is contrary to the intent of the Defense Production Act or this regulation.

(b) Each request for adjustment or exception must be in writing and con-

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tain a complete statement of all the facts and circumstances related to the provision of this regulation or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the request is being considered unless such interim relief is granted in writing by the Office of Industrial Resource Administration.

(d) A decision of the Office of Industrial Resource Administration under this section may be appealed to the Assistant Secretary for Trade Administration, U.S. Department of Commerce. (For information on the appeal procedure, see §700.81.)

**§ 700.81 Appeals.**

(a) Any person who has had a request for adjustment or exception denied by the Office of Industrial Resource Administration under § 700.80, may appeal to the Assistant Secretary for Trade Administration, U.S. Department of Commerce, who shall review and reconsider the denial.

(b) An appeal must be received by the Office of the Assistant Secretary for Trade Administration, International Trade Administration, U.S. Department of Commerce, Washington, D. C. 20230, Ref: DPAS, no later than 45 days after receipt of a written notice of denial from the Office of Industrial Resource Administration. After this 45-day period, an appeal may be accepted at the discretion of the Assistant Secretary for Trade Administration for good cause shown.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or de-

nied at the discretion of the Assistant Secretary for Trade Administration.

(e) When a hearing is granted, the Assistant Secretary for Trade Administration may designate an employee of the Department of Commerce to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(f) When determining an appeal, the Assistant Secretary for Trade Administration may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to the Department of Commerce, or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the appeal is being considered unless such relief is granted in writing by the Assistant Secretary for Trade Administration.

(h) The decision of the Assistant Secretary for Trade Administration shall be made within a reasonable time after receipt of the appeal and shall be the final administrative action. It shall be issued to the appellant in writing with a statement of the reasons for the decision.

### Subpart L—Miscellaneous Provisions

#### 3700.90 Protection against claims.

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this regulation, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

#### §70091 Records and reports.

(a) Persons are required to make and preserve for at least three years, accurate and complete records of any trans-

action covered by this regulation (OMB control number 0625-0107) or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this regulation or any official action. However, this regulation does not specify any particular method or system to be used.

(c) Records required to be maintained by this regulation must be made available for examination on demand by duly authorized representatives of Commerce as provided in §700.71.

(d) In addition, persons must develop, maintain, and submit any other records and reports to Commerce that may be required for the administration of the Defense Production Act and this regulation.

(e) Section 705(e) of the Defense Production Act provides that information obtained under this section which the President deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the President determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to Commerce in connection with the enforcement or administration of the Act, this regulation, or an official action, is deemed to be confidential under section 705(e) of the Act and shall not be published or disclosed except as required by law.

#### 3700.92 Applicability of this regulation and official actions.

(a) This regulation and all official actions, unless specifically stated otherwise, apply to transactions in any state, territory, or possession of the United States and the District of Columbia.

(b) This regulation and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.



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(c) This regulation and its schedules shall not be construed to affect any administrative actions taken by Commerce, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules or delegations of authority under the Defense Materials System and Defense Priorities System previously issued by Commerce. Such actions, contracts, or orders shall continue in full force and effect under this regulation unless modified or terminated by proper authority.

(d) The repeal of the regulations, orders, schedules and delegations of authority of the Defense Materials System (DMS) and Defense Priorities System (DPS) shall not have the effect to release or extinguish any penalty or li-

ability incurred under the DMS/DPS. The DMS/DPS shall be treated as still remaining in force for the purpose of sustaining any action for the enforcement of such penalty or liability.

§700.93 Communications.

All communications concerning this regulation, including requests for copies of the regulation and explanatory information, requests for guidance or clarification, and requests for adjustment or exception shall be addressed to the Office of Industrial Resource Administration, Room 3676, U.S. Department of Commerce, Washington, DC 20230, Ref: DPAS; telephone: (202) 377-4506.

SCHEDULE I TO PART 700—AUTHORIZED PROGRAMS AND DELEGATE AGENCIES

The programs listed in this schedule have been authorized by the Federal Emergency Management Agency for priorities and allocations support under this regulation. They have equal preferential status.

The Department of Commerce has authorized the Delegate Agencies to use this regulation in support of those programs assigned to them, as indicated below.

Program Identification Symbol	Authorized Program	Delegate Agency
<b>Defense Programs</b>		
A1.....	Aircraft .....	Department Of Defense and Associated Agencies. <sup>1</sup>
A2 .....	Missiles .....	Do.
A3 .....	ships .....	Do.
A4 .....	Tank—Automotive .....	Do.
As .....	weapons .....	Do.
A .....	Ammunition .....	Do.
A .....	Electronic and communications equipment .....	Do.
B1 .....	Military building supplies .....	Do.
B8 .....	Production equipment (for defense contractor's account) .....	Do.
B9 .....	Production equipment .... (Government owned) .....	Do.
cl.....	Food resources .....	Do.
C2 .....	Department of Defense construction .....	Do.
C3.....	Maintenance, repair and operating supplies (MRO) for Department of Defense facilities. ....	Do.
C8.....	Controlled materials for Defense Industrial Supply Center (DISC) .....	Do.
C9.....	Miscellaneous .....	Do.
<b>International Defense Programs</b>		
<b>Canada</b>		
D1 .....	Canadian military programs .....	Department of Commerce.
O2 .....	Canadian production and construction .....	Do.
D .....	Canadian atomic .. energy .. program .....	Do.
<b>Other Foreign Nations</b>		
G1 .....	Certain munitions items purchased by foreign governments through domestic commercial channels for export. ....	Department of Commerce.
G2 .....	Certain direct defense needs of foreign governments other than Canada .....	Do.
G3 .....	Foreign nations (other than Canada) production and construction .....	Do.
<b>Co-Production</b>		

Program Identifica- tion Symbol	Authorized Program	Delegate Agency
J .....1.	F-16 Co-Production Program .....	Departments of Commerce and Defense.
Atomic Energy Programs		
E .....1	Construction .....	Department of Energy.
E2 .....	Operations—including maintenance, repair and operating supplies (MRO) .....	Do.
E .....3	Privately owned facilities .....	Do:
Other Energy Programs		
F .....1	Exploration, production, refining and transportation .....	Department of Energy.
F .....2	Conservation .....	Do.
F3.....	Construction and Maintenance .....	Do.
Other Defense, Energy and Related Programs		
H1.....	Certain combined orders (see § 700.17(c)) .....	Department of Com- merce.
H2.....	Controlled materials producers .....	Do.
H .....3.	Further converters (con trolled materials) .....	Do.
H4.....	Distributors of controlled materials .....	Do.
H5.....	Private domestic production .....	Do.
H .....6	Private domestic construction .....	Do.
H7.....	Maintenance, repair a n d operating s u..p..p..l..i..e..s...(MRO)	Do.
K1.....	Federal supply items .....	General Services Ad- ministration.
N1.....	Approved civil defense programs .....	Federal Emergency Management Agen- cy.

<sup>1</sup> Department of Defense agencies . . Army, Navy (including Coast Guard), Air Force, Defense Logistics Agency, and Na-  
tional Security Agency. Associated Agencies of the Department of Defense include Central Intelligence Agency, Federal Aviation  
Administration, and National Aeronautics and Space Administration.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601. Jan. 9, 1989, and amended at 56 FR 8109.  
Feb. 27, 1991]

Pt. 700, Sched. IV

SCHEDULE IV TO PART 700—COPPER CONTROLLED MATERIALS PRODUCERS' SET-ASIDE BASE AND PERCENTAGE, \$

Set-aside Base—Average monthly shipments for producer's own account during the previous calendar year.

Product	Set-aside percentages <sup>1</sup>
Brass products:	
Unalloyed:	
Plate, sheet, strip, and rolls	3
Rod, bar, and wire	3
Seamless tube and pipe	2
Alloyed:	
Plate, sheet, strip, and rolls	2
Rod, bar, shapes, and wire	2
Seamless tube and pipe	7
Military ammunition cups and discs	10
Copper wire mill products:	
Bare and tinned	2
Weatherproof	2
Magnet wire	2
Paper and lead power cable	2
Paper and lead telephone cable	2
Asbestos cable	2
Portable and flexible cord	2
Communications wire and cable	2
Shipboard cable	2
Automotive and aircraft wire and cable	2
Insulated power cable	2
Signal and control cable	2
Coaxial cable	2
Copper-clad steel wire containing over 20 percent copper by weight regardless of end use	2
Copper foundry products	2
Copper and copper-base alloy powder mill products	(2)

<sup>1</sup> Applies to metal weight, except copper wire mill products, which are by copper content.

<sup>2</sup> No reserve space required. Producers of these products are nevertheless required to accept rated orders for such products in accordance with the provisions of this regulation.

SCHEDULE V TO PART 700—NICKEL ALLOYS CONTROLLED MATERIALS PRODUCERS' SET-ASIDE BASE AND PERCENTAGES

Set-aside Base—Average monthly shipments, by each producer, during the previous calendar year.

Product	Set-aside percentages
Rod and bars (except anode bars):	
Hot-rolled, including wire rod	10
Forging quality	10
Cold-finished	10
Sheet and strip:	
Hot-rolled	10
Cold-rolled	10
Foil	10
Rata	10
Pipe, tubing	10
Wire	10

Product	Set-aside percentages
Other ma. forms:	
Ingot	10
Blooms, slabs, billets	10
Powder	10
Shapes and forms not listed above (including anode bars)	10
Castings (less gates and risers, rough as cast)	10

APPENDIX I TO PART 700—DELEGATIONS OF AUTHORITY

DPAS DEL. I—Delegation of Authority to the Secretary of Defense; Defense Priorities and Allocations System (15 CFR part 700)

1. Authority.

Defense Production Act of 1950, as amended (50 U.S.C. App. '2061, et seq.); Executive Order 10480, 18 FR 4939. 3 CFR 1949-1953 Comp., p. 962, as amended; and Defense Mobilization Order (DMO) 3,44 CFR 322.

2. Purpose.

(a) This document delegates certain authority to the Secretary of Defense necessary to the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700).

(b) Certain specifics concerning the implementation of this delegated authority are contained in a Statement of Conditions to this delegation issued by the Office of Industrial Resource Administration (OIRA), Department of Commerce (DOC).

3. Rating Authority.

(a) The Secretary of Defense is delegated the authority to place rated contracts and orders in support of Department of Defense (DOD) programs authorized by the Director, Federal Emergency Management Agency.

(b) The Secretary of Defense is delegated the authority to use the DX rating symbol in placing rated orders for those authorized programs determined by the President to be of the Highest National priority as described in the DOD Master Urgency List.

4. Co-production Programs.

(a) The Secretary of Defense may request priority rating authority from DOC for specific co-production programs, and if granted, may authorize only those foreign firms which have entered into a formal co-production agreement with a U.S. producer to use priority ratings.

(b) DOC may authorize the use of priority ratings by other foreign firms providing items necessary to the co-production activity on a case-by-case basis.

5. Production and Construction Equipment.

(a) The Secretary of Defense may authorize persons to place rated orders for delivery of production equipment required to support authorized programs of DOD, when the equipment is necessary for the timely performance of rated orders and timely delivery

of the equipment cannot be obtained otherwise.

(b) The Secretary of Defense may authorize persons to place rated orders for delivery of construction equipment, when the equipment is to be used for authorized construction projects and when timely delivery of the equipment cannot be obtained otherwise.

#### 6. *Delivery Scheduling.*

The Secretary of Defense is delegated the authority to reschedule deliveries of materials which are required in support of DOD programs, provided that such authority shall be used (1) only to reschedule deliveries among contracts or orders assigned priority ratings by DOD, and (2) only to the extent that such rescheduling of deliveries requires no change in production schedules of other rated orders.

#### 7. *Special Priorities Assistance.*

The Secretary of Defense may sponsor requests by persons for special priorities assistance upon determining the defense urgency of the requested assistance. DOD will: (1) serve as the initial point of contact for persons needing assistance, (2) verify the accuracy of the information provided and make reasonable efforts to resolve the issues, and, when necessary, (3) expeditiously forward the request through established DOD channels to DOC to facilitate timely resolution. Upon receipt of the request for special priorities assistance, DOC will take immediate action to effect resolution and will keep DOD advised of progress.

#### 8. *Controlled Materials.*

The Secretary of Defense is delegated the authority to make allotments of controlled materials to other agencies in support of authorized defense programs.

#### 9. *Compliance, Audits, and Training.*

In exercising this delegation, the Secretary of Defense should ensure that both DOD personnel and defense contractors are in full compliance with the provisions of the DPAS regulation. Accordingly:

(a) The Secretary of Defense is delegated the authority to review the implementation of the DPAS by all persons who are in receipt of rated orders supporting DOD programs. However, this review shall not include inquiries into any unrated activities of these persons.

(b) The Secretary of Defense shall notify DOC of any alleged violations of the priorities and allocations provisions of the Defense Production Act or the DPAS regulation.

(c) The Secretary of Defense should conduct a continuing training program to ensure that appropriate DOD and contractor personnel are thoroughly familiar with the Provisions of the DPAS and this delegation.

#### 10. *Limitations of Authority.*

(a) This delegated authority shall not be used for (1) civilian items for resale in Military Exchanges or the packaging for such

items; (2) material purchased from exclusively retail establishments; (3) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management or (4) direct procurement by or for DOD of any items specifically set forth in the Statement of Conditions to this delegation (not published).

(b) This delegation shall be implemented in accordance with the DPAS regulation, the Statement of Conditions to this delegation (not published), and any other regulations or official actions issued by DOC. It does not limit the authority of the Secretary of Commerce under Executive Order 10480 or other authority.

#### 11. *Redelegations of Authority.*

The authority granted by this delegation may be redelegate within DOD and to other agencies of the United States administering DOD programs. Any redelegations of such authority shall be made in writing with a copy furnished to DOC. No other redelegations of such authority shall be made without the prior written approval of DOC.

#### 12. *Effective Date and Revocation of Previous Delegations.*

This delegation of authority shall take effect August 29, 1984, revoking all previous delegations issued by DOC to DOD relating to these authorities.

Dated: June 21, 1984.

Walter J. Olson,

Deputy Assistant Secretary of Commerce for Export Administration.

~~DPAS DEL. 2—Delegation of Authority to the Secretary of Energy: Defense Priorities and Allocations System (15 CFR part 700)~~

#### ~~1. *Authority.*~~

~~Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, et seq.); Executive Order 10480, 18 FR 4939, 3 CFR 1949-1953 Comp., p. 962, as amended; Executive Order 11912, 41 FR 15825, 3 CFR 1976 Comp., p. 114, as amended; Executive Order 12148, 44 FR 43239, 3 CFR 1979 Comp., p. 393, as amended; Defense Mobilization Order (DMO) 3, 44 CFR 322; and DMO-13, 44 CFR 330.~~

#### ~~2. *Purpose.*~~

~~(a) This document delegates certain authority to the Secretary of Energy necessary to the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700).~~

~~(b) Certain specifics concerning the implementation of this delegated authority are contained in a Statement of Conditions to this delegation issued by the Office of Industrial Resource Administration (OIRA), Department of Commerce (DOC).~~

#### ~~3. *Rating Authority.*~~

~~(a) The Secretary of Energy is delegated the authority to place rated contracts and orders in support of Department of Energy~~

Bureau of Export Administration, Commerce

May 1995  
DoD 4400.1-M  
Pt. 700, App. III

APPENDIX III TO PART 700-FORM ITA-999; REQUEST FOR SPECIAL PRIORITIES ASSISTANCE

OMB No. 0625-0015

<div>FORM ITA-999 REV 7-84</div> <div>U.S. DEPARTMENT OF COMMERCE ADMINISTRATION</div> <div>REQUEST FOR SPECIAL PRIORITIES ASSISTANCE (TO BE FILED WITH SPONSORING GOVERNMENT AGENCY) READ INSTRUCTIONS ON REVERSE SIDE (Type/write or print in ink)</div> <div>Priority assistance may be granted unless a completed application form has been received (U.S.C. App. Sec. 2155). Any information furnished is deemed confidential pursuant to 50 U.S.C. App. Sec 2155(c).</div>		FOR ITA USE ONLY	
		Case No.	
		Received	
TO: (Fill in name and address of appropriate Sponsoring Govt. Agency)		Routed to	
1. Applicant's name and complete address (Street, City, State and ZIP code).  h. Telephone No. (Include Area Code) _____ c. Contact's Name _____		3. Name and address of Applicant's customer.	
4. Purchase order or contract number of Applicant's customer.  Date _____		5. Rating on customer's purchase order.	
6. Date Applicant accepted customer's purchase order.			
7. If known, identify the Government program, end product, and contract number for which Applicant's item(s) is required by customer.		8. Description of item(s) to be delivered or service rendered by Applicant through use of item(s) shown in (10).	
9. How will item(s) shown in (10) be used? (Check) <input type="checkbox"/> As Production Material : <input type="checkbox"/> For Construction Project <input type="checkbox"/> As Capital Equipment <input type="checkbox"/> As Maintenance, Repair and Operating Supplies			
D. ITEM(S) FOR WHICH APPLICANT REQUESTS ASSISTANCE			
Indicate quantity (Lbs., ft., pcs.) (8)	Description (As appearing in Applicant's purchase order with additional information, such as: model, part, die number, etc.) (b)	Approximate dollar value of quantity shown (c)	
11. a. Applicant's purchase order number to Supplier and date. (Attach copy and all amendments, and change orders.)		b. Rating on Applicant's purchase order. If none, so state.	
		c. Date Applicant's purchase order accepted by Supplier. (Attach copy of acceptance)	



<b>12. a. Supplier's name and complete address.</b> <i>(Street, City, State and ZIP Code)</i>  <b>b. Contact's name</b> _____ <b>c. Telephone number</b> _____ <i>(Include Area Code)</i>		<b>d. Supplier's shop order number.</b> _____  <b>e. If Supplier is an agent or distributor, give producer's name and address.</b> <i>(Provide name and telephone number, including Area Code, of person to contact and supplier's purchase order number, if known)</i>	
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13. Original Shipment Schedule of Item(s) shown in 10 — Supplier to Applicant									
<b>a. Applicant's Original Shipment Requirement</b>	Month								
	Year								
	No. of Units								Total units
<b>b. Supplier's Original Shipment Promise</b>	Month								
	Year								
	No. of Units								Total units
Current Shipment Schedule of Item(s) shown in 10 — Supplier to Applicant									
<b>c. Shipment(s) Now Required by Applicant</b>	Month								
	Year								
	No. of Units								Total units
<b>d. Supplier's Present Shipment Promise</b>	Month								
	Year								
	No. of Units								Total units

**USE CONTINUATION BLOCK OR SEPARATE SHEET, IF NECESSARY, FOR ANSWERS TO 14, 15 AND 16 BELOW**

<b>14. Reasons given by Supplier for inability to meet Applicant's required shipment date(s), including interfering rated orders or programs, if known.</b>		
<b>15. List at least two other suppliers contacted. (If none contacted, explain why)</b>		
Date (a)	Name and complete address (b)	Best quoted shipment date(s) and other pertinent data (c)

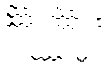
<b>16. Explain the effect of the delay in receipt of item(s) in (10) on the delivery commitment for item(s) in (8); i.e. production stoppage, shipment delays, etc. Describe the attempts to resolve the problems and give specific reasons why special priorities assistance is necessary.</b>	
---	--

<b>17. a. Is quantity shown in 10(a) entire amount on purchase order listed in 11(a)?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>b. Is the same item(s) also on order from another supplier? (If "yes," explain)</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>c. Does the Applicant have an inventory of the item(s) shown in 10?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>d. If answer to (c) above is yes, state number of days of production the inventory will support.</b> _____		
<b>e. State minimum leadtime (Number of days the item(s) in 10 must be received before applicant can ship to customer)</b> _____		

<b>CERTIFICATION —</b> The undersigned certifies that the information contained in Items (2) to (17) of this form, and as any information attached, is correct and complete to the best of his or her knowledge and belief.	
Name of applicant	Signature and typed name of authorized official
Date	Title

The U.S. Code, Title 18 (Crimes and Criminal Procedure), Section 1001, makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction. The individual company information reported on this form is for use in defense mobilization activities. The unauthorized publication or disclosure of individual company information by Government personnel is prohibited by law, and such personnel are subject to fine and imprisonment for unauthorized disclosure.

USCOMM-DC 94-880



Bureau of Export Administration, Commerce

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FOR USE OF GOVERNMENT AGENCY ENDORSING THIS REQUEST (FIELD)		
18. a. Actions taken to attempt resolution of applicant's problem.	By whom	Date
b. Estimate of realistic shipment date.		
c. Coordination of other action taken.	By whom	Date
FOR USE OF GOVERNMENT AGENCY SPONSORING THIS REQUEST (HEADQUARTERS ONLY)		
10. a. Name of Sponsor.		b. Sponsor's address.
c. Sponsor's Case Reference No.	d. Name Of person handling case in Sponsor's office.	Telephone No.
e. Sponsor's program or service to be benefited by Applicant's product or service (Item (7) on first page).		f. Recommendation.
g. Statement of urgency or particular program or service and Applicant's part in it. Specify the extent to which failure to obtain requested assistance will adversely affect the program or service.		
h. Signature.		
Signature of sponsor's authorized official		Title
Type name of authorized official		Date

## INSTRUCTIONS FOR FILING FORM ITA-999

## REQUESTS FOR SPECIAL PRIORITIES ASSISTANCE MAY BE FILED:

- a. when the regular procedures of the Defense Priorities and Allocations System (DPAS) will not obtain delivery of item(s) in time to meet required delivery schedules in support of authorized national defense programs;
- b. to request assistance in placing rated orders; and
- c. to request authority to use a priority rating. Applicants for priority rating authority should complete only sections 1, 2, 10, 11, 12, 16, 19, and the Certification of this form.

## REQUESTS FOR ASSISTANCE MUST BE TIMELY AND MUST ESTABLISH:

- a. the urgent defense related need for the item(s) covered by the associated rated order; and
- b. that the applicant has exercised reasonable effort to resolve the problem.

**WHERE TO FILE** — Each ITA-999 must be sponsored by a Government Agency.<sup>1</sup> Completed forms should be filed with the Government agency having jurisdiction over the contract.

**Department of Defense** — File with local Defense Contract Administration Services Office or plant representative.

**Department of Energy (DOE)** — File with appropriate Field Office.

**General Services Administration** — File with the contracting officer in the Regional Office or the Headquarters Office in Washington, D.C., which ever issued the contract.

If the appropriate agency cannot be determined from the applicant's customer, this form may be filed with the Priorities and Allocations Division, Room 3B76,

International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

**COPIES TO BE FILED** — The applicant should file an original and five (5) copies of this form with the appropriate Government Agency.

**APPLICATIONS FOR PRIORITY RATING TO OBTAIN CAPITAL/ PRODUCTION EQUIPMENT** — Prime and subcontractor applications for a priority rating to obtain capital/production equipment for the performance of a rated order or contract for a Department of Defense procurement must file on Department of Defense Form DD-691, "Application for Rating for Production Equipment," in accordance with the instructions on that form.

## SPECIAL INSTRUCTIONS

If the space in any block is insufficient for a clear and complete statement of the information called for, use the "continuation" space provided or a separate sheet or letter with a copy attached to each copy of the form.

Entries in block 10 must be restricted to those appearing on a single purchase order of the applicant, except in those instances where "special priorities assistance" is requested for additional purchase orders that have been placed with the same supplier for the same item(s) in which case such purchase orders may be combined on one application; however, each purchase order number must be identified and the quantities and rating on each purchase order must be shown separately.

If disclosure of the use to which the particular customer will put Applicant's product is prohibited by security regulations, give a general description in block 10 and enter "classified."

<sup>1</sup>"Item" is defined in the DPAS as any raw, in-process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

<sup>2</sup>"Government Agency" means the Department of Defense, the Department of Energy, General Services Administration, or other Government agencies so designated.

## CONTINUATION

(Identify each statement with the block number concerned)

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tractors are in compliance with the provisions of the DPAS when placing rated orders in the United States, including those for controlled materials.

2. DOC will ensure that U.S. Government personnel and U.S. contractors are in compliance with the provisions of the DPAS when placing rated orders in Canada, including controlled materials.

3. The DSS will inform DOC of any alleged violations of the DPAS of which it may become aware.

Z. Training

1. The DSS will develop "and implement training programs on the DPAS for appropriate Canadian Government procurement and contract administration personnel and contractor personnel.

2. DOC will develop and implement training programs on the DPAS for appropriate U.S. Government procurement and contract administration personnel and contractor personnel.

3. DSS and DOC training programs shall be coordinated to ensure the conduct of a comprehensive program and to minimize duplication.

J. Effective Date

This Memorandum of Understanding shall take effect August 29, 1984.

Canadian Department of Supply and services  
Peter Smith,  
Assistant Deputy Minister, Operations

Date: June 26, 1984.

U.S. Department of Commerce

Walter J. Olson.

Deputy Assistant Secretary, Export Administration

Date: June 21, 1984.

ATTACHMENT A—FEDERAL SUPPLY CLASSIFICATION CLASSES, GROUPS, AND ITEMS NOT ELIGIBLE FOR PRIORITY RATINGS

Group

- 35 Services and trade equipment—except:  
3510 Laundry and dry cleaning equipment  
3520 Shoe repairing equipment  
3530 Industrial sewing machines and mobile textile repair shoes  
3540 Wrapping and packaging machinery  
71\* Furniture  
72\* Household and commercial furnishings and appliances—except:  
7240 Household and commercial utility containers

● DOC will consider requests for special priority rating authorization in the procurement of these items.

73\* Food preparation and serving equipment—except:

7310 Food cooking, baking and serving equipment

7320 Kitchen equipment and appliances

7380 Sets, kits, and outfits: food preparation and serving

74 Office machines, visible record equipment, and data processing equipment\*\*

75\* Office supplies and devices

77\* Musical instruments, phonographs and home-type radios

78\* Recreational and athletic equipment

79 Cleaning equipment and supplies

85\* Toiletries

871 Agricultural supplies

89 Subsistence

91\* Fuels, lubricant% oils, and waxes—except:

9135 Liquid propellant fuels and oxidizers, chemical base

9150 Oils and greases: cutting, lubricating, and hydraulic

9160 Miscellaneous waxes, oils and fats

94\* Non-metallic crude materials—except:

9420 Fibers: vegetable, animal and synthetic

99\* Miscellaneous

Class

7630 Newspapers and periodicals

7660 Sheet and book music

8325 Fur materials

8425 Underwear and nightwear, women's

9610 Ores

~~PARTS 701—704 (RESERVED)~~

~~PART 705—EFFECT OF IMPORTED ARTICLES ON THE NATIONAL SECURITY~~

~~Sec.~~

~~705.1 Definitions.~~

~~705.2 Purpose.~~

~~705.3 Commencing an investigation.~~

~~705.4 Criteria for determining effect of imports on the national security.~~

~~705.5 Request or application for an investigation.~~

~~705.6 Confidential information.~~

~~705.7 Conduct of an investigation.~~

~~705.8 Public hearings.~~

~~705.9 Emergency action.~~

~~705.10 Report of an investigation and recommendation.~~

~~\*\*This Group does not include general purpose automatic data processing equipment, software, supplies and support equipment (see Group 70).~~

~~Only those items subject to DOC authority as delegated by E.O. 10480.~~

APPENDIX IV TO PART 700—MEMORANDUM OF UNDERSTANDING ON PRIORITIES AND ALLOCATIONS SUPPORT BETWEEN THE U.S. DEPARTMENT OF COMMERCE AND THE CANADIAN DEPARTMENT OF SUPPLY AND SERVICES

*A. Purpose*

Since 1950, the United States and Canada have been assisting each other on priorities and allocations for programs important to the defense of both nations. Details on the implementation of that assistance were spelled out in the U.S. Defense Priorities System Regulation No. 2 (DPS Reg. 2), Operations of the Priorities and Allocations System between Canada and the United States (15 CFR part 351). The Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) supersedes the Defense Materials System and Defense Priorities System regulations (15 CFR parts 330 through 351), including DPS Reg. 2. While the revised regulation addresses the procedures for obtaining priorities and allocations support from the United States and Canada, it does not fully detail the working relationship between the United States and Canada. Accordingly, the following Memorandum of Understanding is set forth between the U.S. Department of Commerce and the Canadian Department of Supply and Services.

*B. General*

1. The Office of Industrial Resource Administration, U.S. Department of Commerce (DOC), is the United States point of contact for the Canadian government with respect to priorities and allocations.

2. The Supply Information and Data Management Branch, Canadian Department of Supply and Services (DSS), is the Canadian point of contact for the U.S. government with respect to priorities and allocations.

*C. priority Rating Authority*

1. DOC will authorize the DSS to use priority ratings, including those for the procurement of controlled materials, in the United States in support of the following programs authorized by the Federal Emergency Management Agency:

D1—Canadian Military Programs . . .

D2—Canadian Production and Construction

D3—Canadian Atomic Energy Program

2. DOC must receive requests for priority rating authority, by "program, at least ninety days in advance of the calendar quarter in which the authorization is required. Requests with respect to controlled materials requirement must be received at least 240 days in advance of the calendar quarter in which authorization is required.

*D . D X Authority*

DSS may authorize the use of the "DX" rating symbol for procurements in the United States which are in support of U.S. "DX" rated programs.

*E. Items Which Will Not Receive priority Rating Authority*

Priority ratings may not be used for procurements in the United States of (1) civilian Items for resale in Military Exchanges or the packaging for such items; (2) material purchased from exclusively retail establishments; (3) direct procurement of those Federal Supply Classification classes, groups, or items specified in Attachment A to this Understanding, unless those items are to be used as production material for an authorized program; or (4) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management.

*F. Special Priorities Assistance*

1. DOC will provide special priorities assistance as needed to Canadian procurements in the United States which are in support of D1, D2, and D3 programs when requests for such assistance are sponsored by DSS.

2. DSS will provide assistance to United States procurements in Canada which are in support of authorized programs when requests for such assistance are sponsored by Dec.

*G. Forms and Reports*

1. Canadian requests for special priorities assistance from the United States will be submitted to DOC on Form ITA-999, "Request for Special Priorities Assistance".

2. Requests for priority rating authority will be submitted to DOC on Form DSS-1451-1, "Application for U.S. Priority Rating Covering Importation of Quarterly Requirements of Materials from the United States", on Form DSS-1451-2, "Application for U.S. Priority Rating Covering Specific Materials", or other forms as may be established by DSS.

3. DSS will report monthly on the number of rating authorizations and their dollar value against DOC rating authorizations during the Previous month.

4. DSS will report, two months following the close of each calendar quarter, the number and quantity of controlled materials allotments issued against DOC authorizations for each program during that quarter.

5. United States requests for assistance from Canada will be submitted to DSS by letter.

*H. Compliance*

1. DSS will ensure that Canadian Government personnel and Canadian defense con-